

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CITIZENS COAL COUNCIL)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 13-003
)	
EMERALD COAL RESOURCES, LP;)	
FOUNDATION COAL CORP.; and)	
ALPHA NATURAL RESOURCES, INC.)	
)	
Defendants.)	

MEMORANDUM ORDER ON DEFENDANTS' MOTION TO DISMISS

CONTI, District Judge.

The complaint in the above-captioned case was filed on January 2, 2013 and was referred to Chief United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

The magistrate judge's Report and Recommendation (ECF No. 16), filed on June 10, 2013, recommended that the January 28, 2013 motion to dismiss filed by defendants Emerald Coal Resources, LP, Foundation Coal Corp. and Alpha Natural Resources, Inc. ("Defendants") (ECF No. 4) be granted and that plaintiff Citizens Coal Council ("Plaintiff") be given leave to amend the complaint to make the additional factual allegations reflected in the record.

Service was made on all counsel of record. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, they had fourteen days to file any objections. Defendants timely filed objections to the Report and Recommendation; Plaintiff timely filed a response to the Defendants' objections. Defendants reargue the issues raised in the motion to dismiss. Only one matter needs to be addressed here because it is dispositive. Defendants point out that Foundation Coal Corp. and Alpha Natural Resources, Inc. merged and the merged entity is now known as Alpha Natural Resources, Inc. The merger was acknowledged in paragraph 14 of the complaint. Under these circumstances, Foundation Coal Corp. is now known as Alpha Natural Resources, Inc. or is the predecessor of Alpha Natural Resources, Inc. In any event, Foundation Coal Corp. is not the name of a possible defendant and should be dismissed as a named party. It would be permissible to acknowledge in the caption of an amended complaint that Foundation Coal Corp. is the prior name of Alpha Natural Resources, Inc.; i.e. Alpha Natural Resources, Inc., formally known as Foundation Coal Corp.

With respect to having a plausible claim against Alpha Natural Resources, Inc. as a parent corporation, Plaintiff asserts, among other things, that the "state environmental agency turns to the parent corporation to deal with mining impacts on area residents." (ECF No. 12 at 5.) Considering this allegation with the other allegations Plaintiff intends to assert and the public policy issue raised, there may be sufficient allegations that could be asserted to support a plausible claim and Plaintiff may file an amended complaint. The Report and Recommendation adequately addresses the other objections. Because an amended complaint was viewed as necessary, the court understands that the motion to dismiss should be granted, but without prejudice to Plaintiff

being able to file an amended complaint within ten days of the entry of order. After review of the pleadings and documents in the case, together with the Report and Recommendation, the objections, and the response thereto, the following order is entered:

AND NOW, this 2nd day of August, 2013:

IT IS HEREBY ORDERED that the motion to dismiss filed by Defendants is **GRANTED**. It is granted with prejudice to the extent that Foundation Coal Corp. is dismissed and granted without prejudice to Plaintiff being given leave to file an amended complaint.

IT IS FURTHER ORDERED that Plaintiff is given leave to amend the complaint in this action, in keeping with (a) the additional allegations and documentation made of record and (b) the Report and Recommendation, within ten days from the date of this order.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 16) of Chief Magistrate Judge Lenihan, dated June 10, 2013, as modified by this order, is adopted as the opinion of the court.

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc: All Counsel of Record
Via Electronic Mail